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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,698	07/07/2001	Frederick J. Lang	11302-1250(44040-260647)	4892

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EXAMINER

WACHTEL, ALEXIS A

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,698

Applicant(s)

LANG ET AL.

Examiner

Alexis Wachtel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Detailed Action

Response to Amendment

1. Applicant's amendment and accompanying Remarks filed 6-27-2003 have been entered and carefully considered.

The amendment is sufficient to overcome the anticipation/obviousness rejections of claims 1-72 since the previously applied prior art fails to teach the use of an ion-sensitive binder with the claimed properties. The amendment is sufficient to overcome the 112 2nd paragraph rejections of claims 32 and 39-44 since the Examiner agrees that the term "in-use" is not indefinite. However, an updated search yielded new prior art that provides a new basis of rejection as shown below. Applicant's arguments are rendered moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-7, 25-28 and 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-7, 56 are rejected as being indefinite because they fail to set forth the composition or structure of the wet wipe and only claim properties of tensile strength.

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Claims 25-28 are rejected as being indefinite because they fail to set forth the composition or structure of the ion-sensitive polymer that would account for the claimed properties. US 5,312,883 to Komatsu et al teach an ion sensitive polymer commensurate in scope with claim 25, but still fails to have the claimed property.

Clearly, a missing component that is not claimed accounts the claimed properties.

Claims that merely set forth physical characteristics desired in an article, and not setting forth specific compositions which would meet such characteristics are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in the future. Ex parte Slob (PO BdApp) 157 USPQ 172.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-23, 32-50, 54-66, 70-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,972,805 to Pomplun et al.

Pomplun et al disclose a nonwoven wet wipe that utilizes an ion sensitive binder that makes said nonwoven dispersible in water when the concentration of monvalent ions (salts) is less than 0.5% by weight. The nonwoven can be used a pre-moistened wipe (Col 1, lines 1-23). The ion sensitive binder can be made from acrylic acid and/or methacrylic acid.(Col 4, lines 15-20). Additionally, the nonwoven can be made of fibers

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having lengths of 0.1 to 15mm (Col 5, lines 55-60). The nonwoven can be made of natural fibers such as wood pulp fibers or synthetic fibers (Col 5, lines 46-53).

Regarding claims 8-10, 45-47 and 71, Pomplun et al fail to teach the claimed wipe thickness. However, since the wipe thickness is directly proportional to the strength of the wipe, it would have been obvious for one of ordinary skill to have determined the optimal wipe thickness through the process of routine experimentation.

Regarding claims 1-7, 11-13, 32, 39-44, 48-50, 54-56, 61-66, 70 and 72 although Pomplun et al do not explicitly teach the claimed tensile strengths of the nonwoven wipe on immersion of said nonwoven wet wipe in varying concentrations of multivalent ions in water, opacity, or cup crush amount and claimed tensile strength, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of a nonwoven wipe. The burden is upon the Applicant to prove otherwise. In the alternative, the claimed tensile strengths of the nonwoven wet wipe on immersion of said nonwoven wipe in varying concentration of multivalent ions in water would obviously have been provided by the process disclosed by Pomplun et al. The burden is upon the Applicant to prove otherwise.

In regards to claims 18-23, Pomplun et al and Mumick et al as set forth above that an amount of monovalent ions greater than 0.5% prevents the dissolution of the ion sensitive polymer. Additionally, Pomplun et al teach the use of NaCl as an activating compound in the amount of 0.85% (Col 8, lines 5-10). Pomplun et al clearly implies that an amount of NaCl greater than 0.5% up to some unspecified amount will prevent the ion sensitive polymer from going into solution. Although Pomplun et al fails to teach the

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claimed amount of NaCl used, it would have been obvious to one of ordinary skill to have determined the optimal amount of NaCl used to through the process of routine experimentation. For example, too great of an amount of NaCl could prevent the wet wipe from disintegrating in water since the excess amount of NaCl could afford to the water a salt concentration of greater than 0.5% thus preventing dissolution of the water soluble polymer.

6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,972,805 to Pomplun et al in view of US 6,277,768 to Mumick et al.

Pomplun et al as set forth above fail to teach the claimed co-binder used additionally with the ion-sensitive polymer as disclosed above. Mumick et al is directed to temperature sensitive polymers and water-dispersible products and teaches that water-dispersible binders can be blended from more than one chemical wherein the second chemical or co-binder can be polyethylene vinyl acetate (Col 7, lines 2-34). Examiner notes that polyethylene vinyl acetate as disclosed by Mumick et al is assumed to be non-crosslinking. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated a second binder or co-binder with the ion sensitive polymer binder for use in the wet wipe disclosed above, motivated by the desire to improve the binding properties of the resulting blended binder.

7. Claims 51-53,67-69 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,972,805 to Pomplun et al in view of US 5,648,083 to Bliezsner.

Per claim 51-53,67-69, Pomplun et al as set forth above fail to teach the use of a wetting composition with the wet wipe wherein the composition comprises the claimed

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amount of organic solvents. However, Bliezner teaches that disposable wipes are typically pre-moistened with a composition containing from 91% to 99.5% water by weight of the composition which meets Applicant's limitation of less than substantially no presence of organic solvent (Col 4, lines 32-36) per claims 51-53 and 67-69.

8. Claim 29-31 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,972,805 to Pomplun et al in view of US 5,648,083 to Bliezsner in view of US 2001/0053753A1 to Engekhardt.

Pomplun et al as set forth above fail to teach the use of a wetting composition with the wet wipe wherein the composition comprises the claimed amount of deionized water, preservatives, surfactants, silicone emulsions, emollients, fragrances, fragrance solubilizers and pH adjusters. However, Bliezner teaches that disposable wipes are typically pre-moistened with a composition containing 94% or more of water and various combinations of other ingredients including moistening agents or humectants, emollients, surfactants, emulsifiers, antimicrobial agents, skin protectants, fragrances and pH-adjusting agents (Col 2, lines 3-12). The composition also contains a silicone oil and an emulsifier (Col 3, lines 32-36). It is preferred that the composition contain from 91% to 99.5% water by weight of the composition (Col 4, lines 32-36). Since both Pomplun et al and Bliezsner et al are concerned with the same utility, it would have been obvious to have provided the wet wipe disclosed by Pomplun et al with the wetting composition disclosed by Bliezsner et al. One of ordinary skill would have been motivated by the desire to improve the in use characteristics of the resulting wet wipe.

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While Pomplun et al and Bliezsner et al as set forth above teach the use of fragrances in the binder, Pomplun et al and Bliezsner et al do not teach that a fragrance stabilizer is used. Engekhart is directed to personal cleansing compositions and teaches that it is well known in the art to use a fragrance solubilizer to solubilize fragrances (pp 1, Col 2, [0013]). In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a fragrance solubilizer in the wetting composition of the wet wipe nonwoven as set forth above by Bliezsner et al in view of Komatsu et al motivated by the desire to eliminate fragrance gradients in said wetting composition.

Pomplun et al, Bliezsner et al and Engekhart as set forth above fail to teach the claimed amounts of preservatives, surfactants, silicone emulsions, emollients, fragrances and fragrance solubilizers in the wetting composition. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the claimed weight percent range of preservatives, surfactants, silicone emulsions, emollients, fragrances and fragrance solubilizers in the wetting composition motivated by the desire to optimize the wetting composition's chemical interaction with the nonwoven wipe, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum ranges of components involves only routine skill in the art. *In re Aller*, 2208.2d454 105 USPQ 233. (CCPA 1955).

Per claims 30 and 31, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the claimed chemical components

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in the claimed amounts in the wetting composition since it is well known in the art that the claimed components are routinely used as components in cleansing substances.

Response to Arguments

10. Applicant argues that 112 2nd paragraph rejections of claims 1-7 and 56 is improper and cites case law relating to functional language to overcome the instant rejection. However, it is noted that *Ex parte Slob* states, "Claims that merely set forth physical characteristics desired in an article, and not setting forth specific compositions which would meet such characteristics are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in the future. Additionally, MPEP 2173.05(g) is directed to a functional limitation within a claim. Specifically, "A functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited ingredient or step." Examples of functional language are given as 'a radical on a chemical compound incapable of forming a dye with said oxidizing developing agent,' 'members adapted to being positioned,' and 'portions being resiliently dilatable whereby said housing may be slidably positioned.' Applicant does not claim (per claim 1, for example) 'A wet wipe capable of providing a tensile strength resistance of greater than about 100 g/in...' Rather, Applicant claims (per claim 1, for example) 'A wet wipe having an in-use tensile strength of greater than about 100g/in...' The difference is that the former is considered a functional limitation, while the latter is a limitation to a desired physical property.

In connection with *Ex parte Slob*, the following comments are made:

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i.) The claimed physical property limitations are not functional limitations according to MPEP 2173.05(g).

ii.) The claim is indefinite and functional according to Ex Parte Slob.

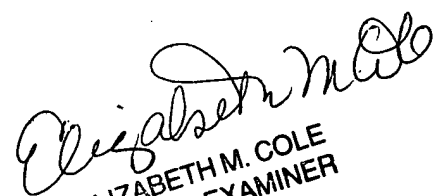
iii.) "Functional" is not equivalent to "definite". Even if said property limitations were deemed functional under the cited MPEP section, said section does not state that all functional limitations meet the 112 2nd requirements of definiteness. In other words, a limitation can be functional and indefinite at the same time.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alex Wachtel, whose number is (703)-306-0320. The Examiner can normally be reached Mondays-Fridays from 10:30am to 6:30pm.

If attempts to reach the Examiner by telephone are unsuccessful and the matter is urgent, the Examiner's supervisor, Mr. Glenn Caldarola can be reached at (703) 308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


ELIZABETH M. COLE
PRIMARY EXAMINER